

Department of Land Conservation and Development

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October 11, 1988

TO: City and County Planning Directors
FROM: James F. Ross, Director *JFR*
SUBJECT: PETITION TO ADOPT TEMPORARY RULE

At the September commission meeting, 1,000 Friends of Oregon submitted a petition to adopt a temporary rule relating to rural development outside urban growth boundaries. The petition is designed to provide an interim response to the Supreme Court's directive to develop a statewide policy on the distinction between urban and rural uses. The Commission elected to consider the temporary rule at their next regularly scheduled meeting, October 24, 1988. The rule is scheduled for a public hearing at that time.

Please review the attached petition and proposed rule language. I encourage you to provide the commission with your analysis orally or in written form. The October 24 commission meeting will begin at 8:30 AM in Hearing Room F of the State Capitol in Salem.

JFR:GW/cl's
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Attachment

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

In the matter of providing an)
interim response to the Supreme)
Court's directive to develop a)
consistent statewide policy)
regarding limits on development)
in rural areas designated and)
zoned for residential, commercial)
and industrial uses under LCDC)
acknowledged comprehensive land)
use plans.)

PETITION TO
ADOPT TEMPORARY
RULE
OAR 660-04-019

I. Petitioner

Petitioner's name and address are 1000 Friends of Oregon,
300 Willamette Building, 534 SW Third Avenue, Portland, Oregon
97204.

II. Petitioner's Standing

Petitioner is a nonprofit organization founded in 1975
to promote sound land use planning. It has participated as an
objector in acknowledgment review proceedings for most of the 36
counties and dozens of cities. It has participated as a party,
or provided counsel, in over 100 appellate proceedings before
the Oregon Supreme Court, Court of Appeals and Land Use Board
of Appeals. It has also been substantially involved in the
statewide planning goal adoption process and in the rule-making
for rules interpreting the goals. It was the petitioner in 1000
Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268
(1986) (Curry County), as well as two other appellate proceedings

which have resulted in interpretations of the application of Goal 14 to rural areas (lands outside urban growth boundaries); 1000 Friends of Oregon v. LCDC (Linn Co.), 78 Or App 270, 717 P2d 149 (1986), 1000 Friends of Oregon v. LCDC (Umatilla Co.), 85 Or App 88, ___ P2d ___ (1987)

III. Need For Temporary Rule

A. The Problems Created By The Intensification Of Rural Development

Here is an incomplete list of problems caused by the unrestricted intensification of rural development (development outside urban growth boundaries, "UGB's"):

1. Escalating conflicts between the farming and wood fiber industries and rural residential uses, including the following specific kinds of problems:
 - a. Diversion of forest fire fighting resources from burning trees to burning houses.
 - b. Additional forest and range fires.
 - c. Competition for groundwater supplies used for irrigation.
 - d. Conflict over which uses must bear the burden of preventing or reducing surface water pollution, residential or farming and forestry.
 - e. Restrictions on the uses of pesticides by farmers and

foresters, particularly but not only related to pesticides applied by air.

f. Complaints over and limitations of the use of rural roads used to bring farm and forest products to market.

g. Increasing pressures on wildlife populations, resulting in additional restrictions on farming and forest industries.

h. Harassment and destruction of livestock by dogs.

2. Inefficient, and therefore costly, provision of such services as water and sewer, higher grade roads, school transportation and police and fire emergency services to serve low-density rural development, or after the fact when density finally reaches urban levels. For example, it is costing \$300 million to provide sewers to mid-Multnomah County. (See also Appendices C and D.)

3. Misallocation of capital investments in public facilities and services in urban areas which are either raided to serve rural areas (See Appendix C.) or which are overbuilt because projected urban development is siphoned off to rural areas.

4. Unnecessary conversion of farm and forest lands at the edge of UGB's because the level of development in peripheral exception areas makes inclusion of these lands unattractive.

5. Waste of lands inside UGB's zoned and serviced for development

because development has been siphoned off to rural areas. (See Appendices D and E.)

6. Pollution and visual degradation of natural resources which are the basis for the tourist industry.

B. Geographic Extent Of Lands Which Should Be Subject To Commission Policy

There are nearly 900,000 acres of land subject to the Goal 14 interpretation articulated by the Supreme Court in the Curry County decision. (See Appendix A, the Rural Zoning Table of June 1986, and Appendix B, a map of the areas in the Wilamette Valley.) This is enough land to form a band four miles wide from the Columbia River to the California border.

As of July 1988 the zoning of these areas was approximately as follows:

Rural Residential Zoning: approx. 776,000 acres*

<1 - 3 acre minimum lot sizes:	approx. 255,000 acres
3 - 5 acre minimum lot sizes:	approx. 241,000 acres
10 - 10+ acre minimum lot sizes:	approx. 134,000 acres
Minimum lot size unknown:	approx. 176,000 acres

Rural Commercial Zoning: approx. 37,000 acres**

Rural Industrial Zoning: approx. 48,000 acres***

* Includes 43,000 acres of "nonresource" land in Klamath County

on which residences are generally allowed.

** Includes both rural commercial and rural service center kinds of zones.

*** Does not include 14,000 acres of rural industrial added by Morrow County in 1987, which is subject to a "need" exception under ORS 197.732(1)(c).

C. Commission's Abdication Of Policy Making Responsibility

It has been over 25 months since the Supreme Court issued its decision in Curry County and the Commission has yet to take any action on the recommendations of the Rural Development Policy Committee or to otherwise establish a consistent statewide policy for the nearly 900,000 acres of rural land zoned for residential commercial and industrial development.

Instead of the Commission assuming the responsibility for articulating state policy this function is being fulfilled by other entities. LUBA and the Court of Appeals are developing policy in the context of litigation (see e.g. cases cited above, and Hammack & Associates, Inc. v. Washington County, 89 Or App 40, ___ P2d ___ (1987); Hammack & Assoc. v. Washington County, ___ Or LUBA ___ (1987); Allm v. Polk County, 13 Or LUBA 257 (1985).

The Commission's staff is articulating policy in the review of post-acknowledgment plan amendment review (See e.g. Appendix

H.) Presumably the same kind of policy development is occurring with respect to the periodic review process.

Of course counties are also articulating their own policies, in the course of implementing and amending their comprehensive plans. (See Appendices G, I, J.)

The Land Conservation and Development Commission was given the responsibility of establishing the state's land use policy. It has the experience and staff which should confer upon it a special expertise and a broad perspective in addressing these issues, an expertise not shared by LUBA or the courts and a broad public perspective it cannot delegate to its staff. Its abdication of policy-making responsibility to other bodies may be resulting in a less considered and more fragmented response to the Supreme Court's decision.

D. Prospective Additional Delay In Adopting A Policy;
Decisions Being Made In The Interim

The prospect for early adoption of a policy guiding rural development is not good, for the following reasons:

- o The Commission remains preoccupied with secondary lands issues and will remain preoccupied with those issues probably through its first meeting in 1989.
- o There is no committee recommendation concerning limits on rural residential for areas not proximate to urban growth boundaries. This category probably accounts for between 50 and 75% of the

total land area subject to the policy.

- o Past Commission performance, (such as the effort to define secondary lands and create primary and secondary resource zoning and the Goal 4 administrative rule) demonstrates that controversial matters require between 6 and 20 commission hearings to assure itself and all interested parties full opportunity for debate.
- o Other state agencies which have substantial overlapping interests in these issues, such as the Departments of Environmental Quality, Water Resources, Fish and Wildlife and Forestry, have not been briefed or consulted on many or most of these issues. They should have a full opportunity to participate.

A realistic estimate of the earliest date by which a policy could be adopted is one year from now, over three years after the Supreme Court's decision. During this period many land use planning actions will be taken and much development may occur resulting in rural sprawl with serious adverse consequences of the type described above.

According to a draft of a study of 1004 plan amendments proposed between 1985 and 1988, (Appendix K) there is a trend to propose rezonings of rural lands from lower to higher residential densities, and from residential to commercial and industrial uses. Appendix K, pages 3, 6, 7, 12. According to an analysis

of adopted postacknowledgment plan amendments, a very high proportion of plan amendments which are proposed are ultimately adopted. Appendix K, pages 15-17. This suggests that the trends in proposed amendments are being translated into changes in comprehensive plans.

In addition to these plan changes there are the actually implementation decisions on permits for inappropriate types and intensities of rural residential, commercial and industrial uses.

Without an interim rule these changes in the land use plans and development in rural areas will continue unabated and unqualified by consistent state policy which implemented the policy choice against continued sprawl.

III. Proposed Temporary Rule

For the preceding reasons, petitioner proposes the adoption of a temporary rule to govern plan amendments, periodic review, and counties with comprehensive plans containing exception areas still awaiting acknowledgement. The text of the proposed rule is:

660-04-019 Temporary Rule Governing Certain Land Use Actions In Rural Development Zones

019(1) Scope Of Application of Temporary Rule

The scope of application of this rule is defined with respect to two criteria; certain geographic areas as defined by land use plans and certain types of land use decisions and

planning actions. Only when both criteria are satisfied is the temporary rule applicable.

(a) Lands Subject To The Temporary Rule

The lands which are the subject of this rule are those areas outside of urban growth boundaries:

(i) For which a "developed" exception to Goals 3, 4, pursuant to ORS 197.732(1)(a) or "committed" exception pursuant to ORS 197.732(1)(b) were taken to Goals 3, 4, 15, 16, and 17 and which were acknowledged by the Commission prior to the adoption of this rule; and:

(ii) Which the Commission acknowledged as not being within the definitions of "agricultural lands" in Goal 3 or "forest lands" in Goal 4, and which as a result were approved for residential, commercial, or industrial zoning or other zoning not otherwise permitted under Goals 3, 4, 15, 16, 17.

(iii) For which exceptions of the type described in (i) or nonresource designations and zoning of the type described in (ii) have been proposed but not yet acknowledged by the Commission.

(b) Planning Actions And Land Use Decisions Subject To This Rule

Lands which are the subject of the following land use planning actions are subject to this temporary rule:

- (i) Post-acknowledgment plan amendments which are subject to the Goals, as described in ORS 197.835(4), in which the result would be to authorize an increase in the maximum rural residential density; or
- (ii) Post-acknowledgment plan amendments subject to the Goals, as described in ORS 197.835(4), in which the result would be to rezone land zoned for residential uses to commercial or industrial zones; or
- (iii) Commission acknowledgment review, pursuant to ORS 197.251; or
- (iv) Periodic review of comprehensive plans pursuant to ORS 197.640 to 197.647, including periodic reviews already initiated but not completed at the time of the adoption of this rule.

019(2) Relationship to OAR 660-04-018

This temporary rule, Subsection 019, takes precedence over and replaces current OAR 660-04-018 for all the lands and land use actions and decisions described in subsection (1), above.

019(3) Standards For Areas Outside UGB's Zoned For Residential Uses

(a) Areas Zoned And Acknowledged For Residential Uses:

Areas zoned for rural residential use under an acknowledged comprehensive plan cannot be rezoned to allow commercial or industrial uses and cannot be rezoned to authorize higher residential densities.

(b) Areas Proposed For Zoning For Residential Uses:

Areas outside UGB's for which rural residential zoning is proposed but which are not acknowledged as of the date of this rule or which have not become final as post-acknowledgment plan amendments may not be zoned to authorize more than 1 dwelling on each lot legally created as of the date of this rule.

019(4) Standards For Rural Commercial And Industrial Development

(a) Expansion Of Existing Uses

Commercial and industrial uses already in operation may be allowed to expand their operations to up to 50% of the area in use as of the date of the adoption of the rule.

(b) New Uses

New commercial and industrial uses, (those not in existence as of the date of adoption of this rule) which will occupy more than 10,000 square feet (including parking and storage) require a reasons exception pursuant to ORS 197.732(1)(c). During the pendency of this temporary rule, no county may take action which

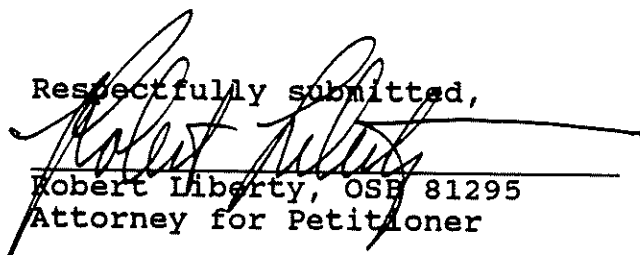
would allow a new commercial or industrial use or category of uses if any city with an urban growth boundary within 3 miles of the proposed new use files a written objection to the proposed use or uses as part of the county's or the Commission's regular land use decision making process.

019(5) Construction of the Rule

When this rule is susceptible to more than one reasonable interpretation the interpretation which yields the broadest scope of application of the rule is be employed in order to provide the widest possible application of the important state policies contained in Goals 11 and 14.

Dated: 22 September 1988

Respectfully submitted,


Robert Liberty, OSB 81295
Attorney for Petitioner